

Fair Political Practices Commission

Memorandum

To: Chairman Johnson, Commissioners Hodson, Huguenin, Leidigh & Remy

From: Emelyn Rodriguez, Commission Counsel, Legal Division
Scott Hallabrin, General Counsel

Subject: Adoption of Proposed Amendments to Regulation 18530.4— Relating to Legal Defense Funds

Date: October 30, 2007

Proposed Commission Action and Staff Recommendation: Adopt amendments to Regulation 18530.4 (Attachment 1).

Public Notice: Public notice of the amendments to Regulation 18530.4 was published through the Office of Administrative Law and emailed to interested persons. We received one comment letter asking that candidates and officers be allowed to establish legal defense accounts and use funds to pay legal fees incurred as the result of being called to testify as a witness or submit to an interview by law enforcement officials. Staff does not recommend changes to the regulation based on this comment, as discussed in the Supplemental Memorandum (Attachment 2).

Reason for Proposal: The amendments to Regulation 18530.4 clarify permissible uses for legal defense funds, and specify requirements for the establishment, maintenance, and termination of these accounts as permitted for state candidates and officers under Section 85304 (Attachment 3). Proposed language also specifies recordkeeping and auditing rules applicable to legal defense committees. These amendments would help ensure that legal defense funds for state candidates and officers—which are not subject to contribution limits imposed on campaign committees—do not become a means to evade those limits. The new rules also help ensure that legal defense funds are raised, and used for appropriate purposes.

Summary of Amendments Regulation 18530.4: The August 2007 noticed version of Regulation 18530.4 remains largely unchanged with the exception of a few are minor modifications reflecting language corrections and other non-substantive changes proposed by staff at the September 2007 meeting.¹ Substantive additions and changes to the regulation from the September 2007 version considered by the Commission are indicated in bold type. The following provisions remain unchanged from the prenotice version of the regulation: (1) new rules regarding the establishment of the legal defense account and controlled committee; (2) new rules regarding recordkeeping and audits; (3) new filing schedule; (4) limitations on use of legal defense funds; (5) disposition of remaining funds; and (6) termination and reopening of committees.

¹ At the September 2007 meeting, staff recommended deleting superfluous language in subdivision (d) that remained due to an editing error. In addition, staff corrected a sentence on page 4, line 19, referring to Division 16, not 15, of the Elections Code with regard to election contests.

The only substantive change involves amendments specifying that legal defense fund accounts established for state candidates and officers under Section 85304 (which are *not* subject to contribution limits) must be maintained separately from the state candidate or officer's campaign accounts and legal defense accounts for local office established under new Section 85304.5 (see subdivision (b)).² This segregation of accounts will make it easier to distinguish funds that are raised under local campaign contribution limits from those raised without limitation.

Recommendation: Staff recommends the Commission adopt amendments to Regulation 18530.4.

Attachments: 1—Amendments to Regulation 18530.4
2—Supplemental Memorandum
3—Section 85304

² The Governor signed AB 1441 into law by on October 5, 2007. New Section 85304.5 allows local candidates and officials to establish legal defense fund accounts for attorney's fees and other legal costs arising from specified civil, criminal, or administrative proceedings. Staff plans to present to the Commission in early 2008, a separate regulation project relating to legal defense funds for local officials and candidates.